

FEB 10 2005
FBI - PHILADELPHIAUNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAG. DOE, II AND K. DOE, Individually and as Parents and
Natural Guardians of G. Doe, III

Plaintiffs

Judge: Munley

vs.

LUZERNE COUNTY, PENNSYLVANIA, LUZERNE COUNTY
CHILDREN & YOUTH SERVICES; OLGA ARAUJO; REBECCA
GLASSMAN; ROBIN RITSICK; KELLY SILVER; DONALD
PRANZONI; MARY PRANZONI,

Defendant

JURY TRIAL DEMANDED

NO.: 3:CV-04-1637

**BRIEF OF WOMEN'S RESOURCE CENTER, INC. IN SUPPORT OF ITS
MOTION TO QUASH SUBPOENA**FACTUAL AND PROCEDURAL HISTORY

On or about December 22, 2004, in reference to the above captioned matter, Barry Dyller of the Dyller Law Firm of Wilkes-Barre, Pennsylvania caused to be forwarded to the Women's Resource Center Notice of Deposition for Purposes of Copying Records Only, and a Subpoena Deuces Tecum directing the representatives of the Women's Resource Center to produce records regarding one Nicholas Greenburgh. (A copy of the Notice of Deposition for Purposes of Copying Records Only and accompanying Subpoena Deuces Tecum along with cover letter sent by Attorney Dyller are attached hereto and marked Exhibit "A"). The records are to be produced by Friday, January 7, 2005 at 10:00 a.m.

In response to this Subpoena, the Women's Resource Center has now filed a Motion to quash the Subpoena and it is in support of this Motion that this Brief is now submitted.

ISSUE I: IS THE WOMEN'S RESOURCE CENTER, INC. ENTITLED TO A QUASHING OF THE SUBPOENA AS SERVED UPON IT?

SUGGESTED ANSWER: IN THE AFFIRMATIVE.

DISCUSSION

Contemporaneous with the filing of the Motion to Quash Subpoena, the Women's Resource Center has submitted a notarized Affidavit from its Executive Director, Margaret Ruddy. In her Affidavit, Miss Ruddy confirms that the Women's Resource Center, Inc. is a private non-profit corporation and is not an agency of any local, State or Federal government and is in no way affiliated with the Commonwealth of Pennsylvania. (See Affidavit of Margaret Ruddy at ¶2). In addition, Miss Ruddy confirms in her Affidavit that any and all victims receiving counseling services at the Women's Resource Center have received such counseling only from persons who are sexual assault counselors as such counselors are defined by 42 Pa. C.S.A. §5945.1. (See Affidavit of Margaret Ruddy at ¶3).

In addition, with respect to this specific individual, Miss Ruddy confirms in her Affidavit that to the extent that Nicholas Greenburgh received any counseling services at the Women's Resource Center, all of said counseling services were provided by a sexual assault counselor as such counselor is defined by 42 Pa. C.S.A. §5945.1. (See Affidavit of Margaret Ruddy at ¶5).

Finally, Miss Ruddy confirms that at all times since the alleged victim has received any and all services at the Women's Resource Center, none of the records of the alleged victim have been disclosed to anyone or any agency outside of the sexual assault counselors counseling the victim at the Women's Resource Center. (See Affidavit of Margaret Ruddy at ¶6).

The Women's Resource Center, Inc. is a "rape crises" center as same is defined in a Pennsylvania Statute entitled "confidential communications to sexual counselors", 1981 P.L. #169, Section as amended 1990 P.L. 737, #183 Section 42 Pa. C.S.A §.5949.1. In addition, the Women's Resource Center, Inc. is a "domestic violence" center as same is defined in the Protection from Abuse chapter of the Domestic Relations Title of the Pennsylvania Statute entitled "confidentiality". 1990 P.L. December 19, #206, Section 2, 23 Pa. C.S.A. §6116.

In their Motion, the Women's Resource Center, Inc. certified that at all times any and all counseling performed at the Women's Resource Center with Nicholas Greenburgh was in connection with the domestic violence and sexual assault of Nicholas Greenburgh. In addition, the Women's Resource Center has certified to this Court that all of the counselors who saw Nicholas Greenburgh at the Women's Resource Center at any time are "sexual assault counselors" and/or "domestic violence counselors" as same is defined in the Pennsylvania Statute entitled "confidential communications to sexual assault counselors" as amended 1990, P.L. 737, #183, Section 42 Pa. C.S.A. §5949.1 and as defined in the Pennsylvania Statute entitled "confidentiality": 1990 P.L. December 19, #206 Section 2, 23 Pa. C.S.A. §6116.

Pennsylvania Statute 42 Pa. C.S.A. §5945.1 specifically provides that a sexual assault counselor cannot disclose any victim's confidential oral or written communications to a counselor, nor may a sexual assault counselor be examined in any Court or criminal proceeding without the written consent of the victim. It has been certified to this Court by Margaret Ruddy to the extent that Nicholas Greenburgh has received counseling services from the Women's Resource Center, Inc., Nicholas Greenburgh is a "victim" as such

persons are defined in 42 Pa. C.S.A. §5945.1(a) and as such persons are contemplated in 23 Pa. C.S.A. §6116. In addition, it has been certified by Margaret Ruddy that any and all services performed for Nicholas Greenburgh by the Women's Resource Center were performed by "domestic violence counselors" and/or "sexual assault counselors" as such persons are referred to in 23 Pa. C.S.A. §6116 and 42 Pa. C.S.A. §5945.1(a).

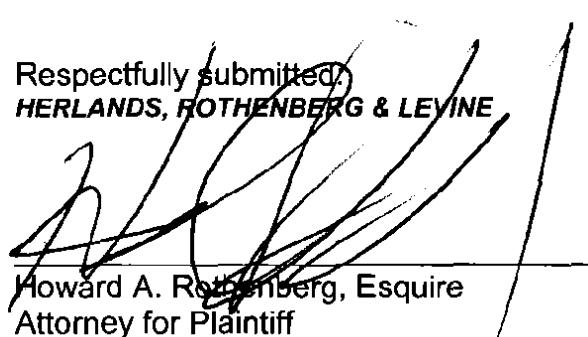
Finally, it has been certified by the Women's Resource Center, Inc. to this Court that the Women's Resource Center, Inc. does not have the written consent of the victim in this case to provide oral testimony, written communications or to testify in the trial of this Defendant. As such, based upon the foregoing, the Women's Resource Center, Inc. has requested that the Subpoena be quashed.

42 Pa. C.S.A. §5945.1 has been upheld as being constitutional and as granting an absolute privilege to victims of sexual assault by the Pennsylvania Supreme Court in Commonwealth v. Wilson, 602 A.2d 1290 (1992). Absolute confidentiality in counseling is of the utmost importance to victims of domestic violence and sexual assault and any impairment of the victim's right to confidentiality in the counseling process would seriously jeopardize a victim's ability to freely participate in a counseling process that is often critical and instrumental in the victim's ability to heal. As such, the Courts of the Commonwealth of Pennsylvania have consistently upheld this privilege. See Commonwealth of PA v. Carter, 96-CR 380 Lackawanna County, J. Walsh, Commonwealth of PA v. Tooley, 95-CV-558, Lackawanna County, Judge Minora, Commonwealth of PA v. Vosburg, 93-CR-1182, Lackawanna County, J. O'Malley, Commonwealth of PA v. Robinson, 93-CR-1234, Lackawanna County, J. Harhut, Commonwealth of PA v. Hughes, 98-CR-1823, Lackawanna County, J. Nealon.

WHEREFORE, based upon the foregoing, the Petitioner, the Women's Resource Center, Inc., moves this Honorable Court to quash the aforesaid Subpoena.

Respectfully submitted,
HERLANDS, ROTHENBERG & LEVINE

BY:


Howard A. Rothenberg, Esquire
Attorney for Plaintiff

345 Wyoming Ave., Suite 210
Scranton, PA 18503
#(570) 961-1850

BARRY H. DYLLER, ESQ.
Also admitted in New York
bdyller@epix.net

SHELLEY L. CENTINNI, ESQ.
Of Counsel
centinisi@epix.net

DYLLER LAW FIRM
GETTYSBURG HOUSE
88 NORTH FRANKLIN STREET
WILKES-BARRE, PA 18701

Telephone: (570) 829-4860
Facsimile: (570) 825-6675
www.barrydyller.com

December 22, 2004

Women's Resource Center
P.O. Box 975
Scranton, PA 18501

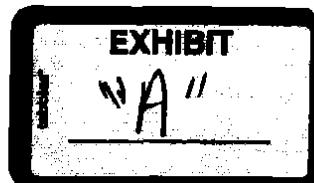
Re: Doe II and K. Doe, individually and as parents and natural
guardians of G. Doe, III., v. Luzerne County, et al., No. 3:CV-04-1637

Dear Sir or Madam:

Enclosed please find the following:

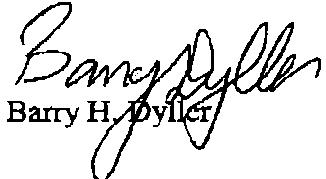
1. A Notice of Deposition For Purpose of Copying Records Only;
2. A Subpoena Duces Tecum directing you to bring or send to the law office of Barry H. Dyller, Esq., Gettysburg House, 88 North Franklin Street, Wilkes-Barre, PA 18701 a true and correct copy of the following:
 - A. All documents referring or relating to Nicholas Greenburgh, D/O/B: 3/10/93; Social Security Number 179-74-0624.

As stated in the Notice of Deposition, if you would prefer to forward the documentation by mail, execute the enclosed Affidavit before a Notary Public and forward it to me with the documents, and it will not be necessary for you to appear. If instead you do intend to appear, please notify me and we will make appropriate arrangements for your appearance.



Thank you for your anticipated cooperation. If you have any questions, please call me.

Very truly yours,


Barry H. Dyller

BHD/nr

SAO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

MIDDLEDISTRICT OFPENNSYLVANIA

G. DOE II and K. DOE, individually and as
parents and natural guardians of G. DOE III
V.

SUBPOENA IN A CIVIL CASE

LUZERNE COUNTY, et al.

Case Number:¹ 3:CV-04-1637

TO: Women's Resource Center
P.O. Box 975
Scranton, PA 18501

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below
testify in the above case.

PLACE OF TESTIMONY	COURTROOM
DATE AND TIME	

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition
in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Law Office of Barry H. Dyller 88 North Franklin Street, Wilkes-Barre, PA 18701	Friday, January 7, 2005 at 10:00 a.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the
place, date, and time specified below (list documents or objects):

All documents referring or relating to Nicholas Greenburgh, D/O/B: 3/10/93; Social Security Number 179-74-0624.

PLACE	DATE AND TIME
Law Office of Barry H. Dyller 88 North Franklin Street, Wilkes-Barre, PA 18701	Friday, January 7, 2005 at 10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers,
directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the
matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Barry H. Dyller Attorney for Plaintiffs	December 22, 2004

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Barry H. Dyller, Esq. Gettysburg House, 88 North Franklin Street Wilkes-Barre, PA 18701 (570) 829-4860

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

	DATE	PLACE
SERVED	December 22, 2004	P.O. Box 975 Scranton, PA 18501
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
Women's Resource Center	Certified Mail – Return Receipt Requested	
SERVED BY (PRINT NAME)	TITLE	
Nancie Redmond		

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on December 22, 2004

DATE



SIGNATURE OF SERVER

Gettysburg House, 88 North Franklin Street

ADDRESS OF SERVER

Wilkes-Barre, PA 18701

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fees.

trial be commanded to travel from any such place within the state in which the trial is held, or

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

AFFIDAVIT

STATE OF PENNSYLVANIA

COUNTY OF _____ :

_____, being duly sworn, deposes and states that:

1. I am the records custodian of the documents described in the Notice of Deposition for Purpose of Copying Records Only.
2. The attached documents are true and correct copies of all information in the files of Women's Resource Center which are responsive to the description of documents contained in the Notice of Deposition For Purpose Of Copying Records Only.

Sworn to before me this
____ day of _____, 200____

Notary Public

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

G. DOE II AND K. DOE,
individually and as parents and
natural guardians of G. DOE III,

Plaintiffs,

- against -

LUZERNE COUNTY,
PENNSYLVANIA;
LUZERNE COUNTY CHILDREN
& YOUTH SERVICES;
OLGA ARAUJO;
REBECCA GLASSMAN;
ROBIN RITSICK;
KELLY SILVER;
DONALD PRANZONI;
MARY PRANZONI;

NO. 3:CV-04-1637
Judge Munley

JURY TRIAL DEMANDED

Defendants.

NOTICE OF DEPOSITION FOR PURPOSE OF COPYING RECORDS ONLY

Please take notice that plaintiffs G. Doe II and K. Doe, individually and as parents and natural guardians of G. Doe III, by their attorney Barry H. Dyller, Esq., will take the records deposition of Women's Resource Center at the law office of Barry H. Dyller, Esq., Gettysburg House, 88 North Franklin Street, Wilkes-Barre, PA 18701 on Friday, January 7, 2005 at 10:00 a.m.

There will be no interrogation of a witness as this is a deposition for the purpose of copying records only. No attorneys are expected to be present. Deponent has been told that it may mail copies of the records as requested, in lieu of appearing for the deposition.

Women's Resource Center is directed to bring the following documents:

1. All documents referring or relating to Nicholas Greenburgh, D/O/B: 3/10/93;

Social Security Number 179-74-0624.

Under Rule 30(b)(6) of the Federal Rules of Civil Procedure, Women's Resource Center is required to designate a person or persons who possess knowledge of the documents described above.

**WOMEN'S RESOURCE CENTER IS ADVISED THAT IT IS
SUFFICIENT TO PROVIDE THE MATERIAL REQUESTED BY MAIL, OR HAND
DELIVERY, IN LIEU OF APPEARING IN PERSON FOR THIS DEPOSITION,
PROVIDED THAT IT CERTIFIES THAT THE COPIES OF ALL RECORDS,
DOCUMENTS AND INFORMATION OF ANY TYPE CONCERNING THE INSTANT
MATTER HAVE BEEN PRODUCED, BY EXECUTING THE ATTACHED AFFIDAVIT
BEFORE A NOTARY PUBLIC AND FORWARDING IT WITH THE DOCUMENTS.**



Barry H. Dyller, Esq.
Gettysburg House
88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 829-4860
Attorney for Plaintiffs

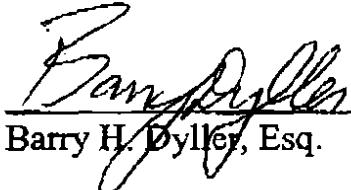
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

G. DOE II AND K. DOE, :
individually and as parents and :
natural guardians of G. DOE III, :
:
Plaintiffs, :
:
- against - :
:
LUZERNE COUNTY, :
PENNSYLVANIA; :
LUZERNE COUNTY CHILDREN :
& YOUTH SERVICES; :
OLGA ARAUJO; : NO. 3:CV-04-1637
REBECCA GLASSMAN; : Judge Munley
ROBIN FITSICK; :
KELLY SILVER; :
DONALD PRANZONI; : JURY TRIAL DEMANDED
MARY PRANZONI; :
:
Defendants. :
:

CERTIFICATE OF SERVICE

BARRY H. DYLLER, ESQ., hereby certifies that on December 22, 2004, he served a copy a Notice of Deposition For Purpose of Copying Records Only and a Subpoena Duces Tecum on all defendants by mailing copies thereof to Frances G. Wenzel, Jr., Law Offices of Polachek & Associates, P.C., Phoenix Plaza, 22 East Union Street, Suite 600, Wilkes-Barre, PA 18701 counsel for defendants Mary Pranzoni and Donald Pranzoni, and on defendants Luzerne

County, Pennsylvania, Luzerne County Children & Youth Services, Olga Araujo,
Rebecca Glassman and Robin Ritsick, by serving copies thereof to their counsel,
Zgymunt Bialkowski, Jr., Esq., 409 Lackawanna Avenue, The Oppenheim
Building, Suite 3C, Scranton, PA 18503.


Barry H. Dylle
Barry H. Dylle, Esq.